

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

GRAHAM-FIELD INC., AND  
GRAHAM-FIELD EXPRESS

PLAINTIFFS

VS.

TUFFCARE, INCORPORATED

DEFENDANTS

CIVIL NUMBER: 98-1306 (DRD)

\* \* \* \* \*

**TAKING OF THE DEPOSITION OF VICENTE GUZMAN**

DATE : DECEMBER 20, 2001

TIME : 10:00 A.M.

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P R E S E N T

1  
2 FOR THE PLAINTIFFS:

3 MR. KENNETH McCULLOCH, ESQ.

4 FOR THE DEFENDANTS:

5 MR. ARTURO NEGRON GARCIA, ESQ.

6 MRS. MARIANA NEGRON VARGAS, ESQ.

7 MRS. LOURDES PAGAN GONZALEZ, ESQ.

8 MR. DEPONENT:

9 MR. VICENTE GUZMAN LOPEZ

10 NOTARY PUBLIC:

11 MR. ANTURO NEGRON GARCIA, ESQ.

12 MR. COURT REPORTER:

13 MR. MERILYN VAZQUEZ DE GARCIA

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2 All parties being present, the following is the transcript  
3 of the proceedings:

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5 MR. KENNETH McCULLOCH:

6 Uh, I'd like to have the standard stipulations. Um...  
7 objections, except as to form, reserved until the time of  
8 trial. You can sign the, uh, transcript in front of any  
9 notary. It doesn't have to, oh!, it doesn't have to be, uh,  
10 the notary used...

11 MRS. MARIANA NEGRON VARGAS:

12 Uh, also, um... Objections as to privilege, which of  
13 course...

14 MR. KENNETH McCULLOCH:

15 Uh, yes, they're, they're, they're... Yes. Uh, I don't  
16 think you have a privilege with this witness, that's why I  
17 didn't...

18 MRS. MARIANA NEGRON VARGAS:

19 Oh! Right.

20 MRS. LOURDES PAGAN GONZALEZ:

21 It's just...

22 MR. KENNETH McCULLOCH:

23 Yeah. Okay.

24 MRS. LOURDES PAGAN GONZALEZ:

25 ...simply standard.

1 Medical?"

2 A "Sí."

3 I Yes.

4 Q And how did you come about, um, selecting Tuffcare,  
5 meeting with Tuffcare, uh, and obtaining this agreement?

6 I "¿Y cómo fue que usted encontró a Tuffcare, se reunió  
7 con Tuffcare y obtuvo este acuerdo?"

8 A "Eh, yo lo hice por teléfono."

9 I I did it by phone.

10 Q I understand, but... why did you pick Tuffcare  
11 instead of ABC Medical or, or some other company?

12 I "Yo sí, eh, lo sé, ¿pero por qué escogió a Tuffcare  
13 en vez de Compañía ABC o XY o cualquier otra compañía?"

14 A "Estaba buscando una compañía de, que manufacturara  
15 sillas de ruedas o que vendiera y..."...

16 I I was looking for a company that would manufacture  
17 or, or sell, uh, wheelchairs...

18 A "...y viendo una revista vi el nombre de ellos y los  
19 contacté."

20 I ...and as I was, uh, looking at a magazine, I saw  
21 their name and I contacted them.

22 Q At the time, were they selling in Puerto Rico, to  
23 your knowledge?

24 I "Y que usted sepa, ¿al momento ellos vendían en  
25 Puerto Rico?"

1 tenía...?"

2 A "No, yo solamente estaba buscando sillas de ruedas  
3 para vender."

4 I No, I was just looking for wheelchairs to sell.

5 Q Is that what you told Calvin Chang?

6 I "¿Eso fue lo que usted dijo a Calvin Chang?"

7 A "Sí."

8 I Yes.

9 Q Was there any discussion about other products that  
10 Tuffcare had that, um, they wanted to sell also?

11 I "¿Había, hubo alguna otra conversación sobre algún  
12 otro producto que tuviera, uh, Tuffcare que tal vez quisiera  
13 usted vender?"

14 A "No, mayormente era sillas de ruedas."

15 I No, it was mainly wheelchairs.

16 A "Y si había, eh... En las sillas de ruedas era que  
17 íbamos a estar exclusivos, en las "standards".

18 I And we'd be exclusive for the standard wheelchairs.

19 A "En los otros productos yo tenía oportunidad de  
20 comprar con otras, con otros competidores."

21 I Uh, with other products I would have the opportunity  
22 to compare with other competitors.

23 A "Y comprar, también."

24 I And, also, to purchase.

25

1 Q Uh, was this all part of the discussion you had with  
2 Calvin Chang way back in 1990?

3 I "¿Esto fue todo parte de las conversaciones,  
4 discusiones que tuvo usted con Calvin Chang allá para el año  
5 '90?"

6 A "Es correcto."

7 I That is correct.

8 Q At the time, uh, did he say they intended to, um,  
9 sell through other, um, distributors in Puerto Rico for  
10 products other than wheelchairs?

11 I "¿Y al momento dijeron ellos que pensaban vender a  
12 otros distribuidores en Puerto Rico sus productos, aparte de  
13 las sillas de ruedas?"

14 A "En todo momento hablamos de las sillas de ruedas,  
15 que iban a ser vendidas a través de, de nosotros. No, no  
16 tengo, no hablamos de nada más."

17 I At all times what we spoke about was about  
18 wheelchairs, which would be sold through us. We did not talk  
19 about anything else.

20 Q And, um... After you... Well, in the, in the  
21 sequence of, of events, after you had your first discussion,  
22 how long was it before you went from the first discussion to  
23 the agreement that you signed on, uh, October 15?

24 I "Y en la secuencia de los hechos que ocurrieron, ¿qué  
25 tiempo pasó después de su primera conversación hasta que firmó

1 I "Pero, eventualmente, antes de que comenzara usted a  
2 vender el producto, ¿recibió usted una lista de precios del  
3 producto?"

4 A "Eh, yo lo que hice fue que identifiqué los productos  
5 que me interesaban y a base de esos productos él me dio  
6 precio."

7 I Well, you see, what I did was identify the products  
8 I was interested in and according to that list he gave me the  
9 price.

10 Q Over the telephone?

11 I "¿Por teléfono?"

12 A "Sí."

13 I Yes.

14 Q Now, did you, did he give you suggested prices for  
15 the sales to the dealers, the dealer prices?

16 I "¿Le dio el precio sugeridos para los 'dealers', el  
17 precio de los 'dealers'?"

18 A "Eh, yo controlaba los, los precios.

19 I I, I controlled the prices.

20 Q No, I understand that. Uh, but did, um...? Were  
21 they suggested, uh, dealer prices, uh...

22 I "Yo...

23 Q ...from Tuffcare?

24 I "Yo entiendo eso. ¿Pero le sugirió Tuffcare precios  
25 para los "dealers"?"

1 A "No."

2 I No.

3 Q Uh... how did you determine, uh, the price at which  
4 to sell the Tuffcare products, uh, to dealers in Puerto Rico?

5 I "¿Y cómo determinaba usted el precio para venderle a  
6 los "dealers" en Puerto Rico los productos de Tuffcare?"

7 A "A base de los precios de los competidores."

8 I Based on competitors' prices.

9 Q Did you, um, use the competitors' prices to dealers  
10 to negotiate prices with Calvin Chang for the products that he  
11 would be selling to you?

12 I "¿Y usted usó el precio de los competidores, de los  
13 "dealers" para negociar con Calvin Chang el precio a que él le  
14 iba a vender a usted los productos?"

15 A "No."

16 I No.

17 Q Um, when you purchased the products from Tuffcare for  
18 re-sale to dealers in Puerto Rico, what was the system you  
19 used, if any, uh, to establish what the price would be to the  
20 dealer for the product?

21 I "Cuando usted compraba los productos, eh, para  
22 vendérselos luego a los "dealers", ¿qué sistema era el que  
23 usted utilizaba para comprar el producto, el, el precio en que  
24 usted iba a comprar el producto para luego vendérselo a los  
25 'dealers'? ¿Qué sistema, si alguno, usaba usted?"



1 A "Yo, sencillamente, me reunía con el "dealer", eh...  
2 sabe, veía los precios que él estaba comprando al  
3 competidor..."

4 I I would simply meet with the dealers, see the prices  
5 he was purchasing from the competitor...

6 A "...igualaba los precios y le daba mejor servicio."

7 I ...I would equal the prices and provide better  
8 service.

9 Q And there's been some testimony that the way the  
10 prices were set for the dealers was to take the price, the  
11 cost, um... I'm, I'm not saying this is what you did, but I  
12 want to know if, if you're aware of it.

13 I "No sé si esto es lo, lo que usted hacía, pero quiero  
14 que usted esté al tanto de esto. Ha habido testimonio de que  
15 lo que se hacía era tomar el costo del producto..."

16 Q The, the, um, companies in the industry take the  
17 price at which they buy the goods from the manufacturer, they  
18 add in the cost for shipping and taxes and then they add-on  
19 twenty (20) or twenty-five (25) percent to that to get their  
20 target price for... the sale to the dealer in Puerto Rico. Are  
21 you...?

22 MR. ARTURO NEGRON GARCIA:

23 I want to raise an objection as to the form of the  
24 question. The problem is, if we can define the source of that,  
25 that, that issue.

1 usted el método de comprar al, el costo, de añadirle al costo  
2 el dinero del envío, los impuestos y un porcentaje ya  
3 especificado para conseguir el precio", el target price, "para  
4 la venta del producto al "dealer"?"

5 A "Bueno, se divide en dos (2). Para el tiempo de V.C.  
6 Medical..."

7 I Well, it's divided two (2) ways.

8 Q Uh-huh.

9 I At the time of V.C. Medical...

10 A "...se dependía del producto y del precio. No había,  
11 no podía decir que había un veinte (20), un veinticinco (25)  
12 fijo."

13 I ...it all depended on the product and the price. I  
14 cannot tell you that there was a fixed twenty (20) or twenty-  
15 five (25) percent.

16 A "Okey. Ahora, para el tiempo de Graham Field, eh,  
17 muchas veces vendíamos menos de un quince (15) por ciento, un  
18 diez (10)..."

19 I But at the time of Graham Field, sometimes we sold  
20 less than a ten (10) or fifteen (15) percent...

21 A "...porque las instrucciones que teníamos en Graham  
22 Field era coger el negocio no importara qué. Mejorar el  
23 precio."

24 I ...because the instructions we had from Graham Field  
25 was to do the business, it didn't mind, uh, not, the price was

1 not the concern.

2 A "Solamente coger el negocio del cliente..."

3 I Only to...

4 A "...quitarle el negocio al competidor."

5 I Only to get the business from the client. That is,  
6 take the business away from the competitor.

7 Q Though, when you started V.C. Medical, you testified  
8 that you told people you would meet the price of the competitor  
9 and provide better service, correct?

10 I "Ahora, cuando usted estaba en V.C. Medical, usted le  
11 decía a las personas que usted igualaba el precio del  
12 competidor y mejoraba el servicio, ¿correcto?"

13 A "Exacto."

14 I Exactly.

15 Q How did you know you'd be able to meet the price and  
16 still make a profit?

17 I "¿Y cómo sabía usted que usted podía comparar el  
18 precio, igualar el precio y aún así tener, eh, ganancia?"

19 A "Porque para aquel tiempo, eh, el mercado no estaba  
20 tan competido como ahora..."

21 I Because...

22 A "...que había un poco más de espacio."

23 I Because at that time the market was not as  
24 competitive as it is now and there was a wider space.

25

1 I "¿Ella también tenía autorización de, eh, poner  
2 órdenes y firmar por órdenes a nombre de V.C. Medical,  
3 también?"

4 A "Siempre lo discutíamos. Con mi aprobación ella  
5 firmaba. No había problema."

6 I We always discussed them. With my approval she would  
7 sign them. There was no problem with that.

8 Q Now, from the time, um... you entered into this  
9 agreement that's exhibit one (1), um, did there come a time  
10 that you started to order products other than wheelchairs from  
11 Tuffcare?

12 I "Eh, luego del momento en que se llegó a este acuerdo  
13 que es el Exhibit uno (1), ¿llegó algún momento en que comenzó  
14 a ordenar algunas otras, eh, productos aparte de sillas de  
15 ruedas?"

16 A "Algunas veces, eh, pues ordenamos otros productos  
17 porque en el vagón, en, en el contenedor había espacio y lo que  
18 hacíamos era, para salvar ahí ese espacio, pues poníamos  
19 bastones o lo que cupiera en ese espacio vacío."

20 I Sometimes, uh, the container or the van was, had some  
21 empty space and, in order to fill-out, fill-out that space, we  
22 would order canes or other products to use the space?

23 Q And, um... about when did you start doing that?

24 I "¿Y como cuándo comenzó a hacer eso?"

25

1 A "No recuerdo exactamente el momento pero sí sé que  
2 siempre que había espacio las instrucciones que le dábamos al  
3 manufacturero era que si quedaba un hueco arriba que pudiéramos  
4 meter algo, pues lo poníamos, para salvar, también, eh,  
5 fletes."

6 I I don't remember when it started, but I do know that  
7 we gave instructions, uh, that if there was any empty space on  
8 top that it should be filled with products so that we would use  
9 the space and have the products to sell. And we would save  
10 shipping charges.

11 Q And what products would you use to fill the space?

12 I "¿Y qué productos se usaban para llenar el espacio?"

13 A "No recuerdo exactamente, pero tenían que ser  
14 productos pequeños."

15 I I don't recall exactly, but it had to be small  
16 products.

17 Q Uh-huh. And, then, after you received those products  
18 you went and sold them and promoted them, correct?

19 I The last...

20 Q After you received...

21 I Uh-huh.

22 Q ...those products, like canes, any small products...

23 I Uh-huh.

24 Q ...you went and sold them and promoted them.

25 I "¡Ah! Entonces, después que recibía estos, estos

1 I I don't recall.

2 Q Uh-huh. Now, in this contract, um, it says "the  
3 contract can be renewed by increasing sales performance", did  
4 you understand that to mean that you had to be selling at your  
5 sales price to dealers fifteen thousand (15,000) or that your  
6 purchases from Tuffcare had to be fifteen thousand (15,000) per  
7 month?

8 I "Y ahí cuando habla del aumento a quince mil dólares  
9 (\$15,000), ¿entendía usted que quería decir que usted tenía que  
10 estar vendiendo al precio de sus, eh, clientes, de sus  
11 "dealers" hasta quince mil dólares (\$15,000) o que tenía que  
12 comprar de la compañía, del manufacturero, eh, quince mil  
13 dólares (\$15,000)?"

14 A "Compras."

15 I Purchase.

16 Q Purchases from Tuffcare.

17 I "Compras de, a Tuffcare."

18 A "Unjú."

19 COURT REPORTER:

20 "Tiene que contestar con la boca."

21 MRS. LOURDES PAGAN GONZALEZ:

22 "Verbalizarla."

23 COURT REPORTER:

24 "Verbalizar."

25

1 INTERPRETER:

2 "Compras a Tuffcare."

3 DEPONENT:

4 "Compras a Tuffcare."

5 INTERPRETER:

6 Purchases to Tuffcare.

7 **MR. KENNETH McCULLOCH, ESQ:**

8 Q Okay. Now, after, after, um, September 30, 1991, did  
9 this contract continue in effect?

10 I "¿Y continuó en efecto este contrato luego del 30 de  
11 septiembre del '91?"

12 A "No hicimos más ningún contrato. Yo seguí  
13 comprándole a él y a otros distribuidores también."

14 I We didn't, uh...

15 A "Manufactureros, perdón."

16 I We didn't make any other contract. I kept buying  
17 from him and from other manufacturers."

18 Q Was it your understanding, as of September 30, 1991  
19 and thereafter, that this exclusive sales agreement was still  
20 in effect?

21 I "¿Pero entendía que al 30 de septiembre del '91 y de  
22 allí en adelante este contrato de exclusividad seguía, eh,  
23 válido?"

24 A "Yo, de verdad, no, no pensaba en el contrato. Lo  
25 que hacía era vender."

1 I The truth is I didn't, I didn't even think about a  
2 contract. What I did was sell.

3 Q Was...? When was the...? At any point, um, in time  
4 from 1990 until the time you sell to... Graham Field, your  
5 business to Graham Field, was there any discussion, um, with  
6 Calvin Chang about the agreement that you had or exclusive  
7 sales agreement or having a different agreement or renewing an  
8 agreement?

9 I "¿Y en algún momento desde el 1990 hasta que le  
10 vendió el negocio a Graham, Graham Field hubo alguna  
11 conversación y, con Calvin Chang de si continuaba el contrato,  
12 si había sido renovado el contrato, si existía algún contrato?"

13 A "Después de este contrato, la única conversación que  
14 yo tuve con Calvin Chang sobre el contrato fue cuando vendí la  
15 compañía Graham Field, que yo..."

16 I After this contract, the only other conversation I  
17 had with Calvin Chang regarding this contract was when I sold  
18 the company to Graham Field, that they...

19 A "Entonces, Mr. Richard Cologny estaba preocupado..."

20 I Mister Richard Cologny was worried...

21 A "...porque, eh, era una competencia de Graham Field."

22 I ...because it was, uh... "Ay, la palabra."

23 Competitor.

24 MRS. LOURDES PAGAN GONZALEZ:

25 Competitor.